

# CONNELL FOLEY LLP

## ATTORNEYS AT LAW

**85 LIVINGSTON AVENUE**  
**ROSELAND, N.J. 07068-3702**  
**(973) 535-0500**  
**FAX: (973) 535-9217**

### OTHER OFFICES

<p>HARBORSIDE FINANCIAL CENTER 2510 PLAZA FIVE JERSEY CITY, NJ 07311 (201) 521-1000 FAX: (201) 521-0100</p> <p>1500 MARKET STREET 12TH FLOOR, EAST TOWER PHILADELPHIA, PA 19102 (215) 246-3403 FAX: (215) 665-5727</p> <p>THE ATRIUM, SUITE E 309 MORRIS AVENUE SPRING LAKE, NJ 07762 (732) 449-1440 FAX: (732) 449-0934</p>	<p>888 SEVENTH AVENUE 9<sup>TH</sup> FLOOR NEW YORK, NY 10106 (212) 307-3700 FAX: (212) 262-0050</p> <p>ONE GREENTREE CENTRE SUITE 201 MARLTON, NJ 08053 (856) 988-5487 FAX: (856) 596-8359</p>
--	---

JOHN A. PINDAR (1969)  
 GEORGE W. CONNELL (2005)  
 ADRIAN M. FOLEY, JR.  
 GEORGE J. KENNY\*  
 KENNETH F. KUNZMAN  
 SAMUEL D. LORD  
 RICHARD D. CATENACCI  
 RICHARD J. BADOLATO\*  
 PETER D. MANAHAN  
 JOHN B. MURRAY  
 MARK L. FLEDER  
 KEVIN J. COAKLEY  
 THOMAS S. COSMA  
 KATHLEEN S. MURPHY  
 PATRICK J. MCAULEY  
 PETER J. PIZZI\*  
 KEVIN R. GARDNER  
 ROBERT E. RYAN  
 MICHAEL X. MCBRIDE\*  
 JEFFREY W. MORYAN  
 PETER J. SMITH\*  
 WILLIAM P. KRAUSS  
 BRIAN G. STELLER  
 PHILIP F. McGOVERN, JR.  
 KAREN PAINTER RANDALL  
 LIZA M. WALSH  
 JOHN P. LACEY  
 MICHAEL J. CROWLEY-

TIMOTHY E. CORRISTON\*  
 ERNEST W.  
 SCHOELLKOPFF\*  
 PATRICK J. HUGHES\*  
 JAMES C. McCANN\*  
 JOHN D. CROMIE  
 ANGELA A. IUSO\*  
 WILLIAM T. McGLOIN\*  
 BRENDAN JUDGE  
 STEPHEN A. URBAN  
 CHARLES J. HARRINGTON  
 III\*  
 STEPHEN V. FALANGA\*  
 TRICIA O'REILLY\*  
 ANTHONY F. VITIELLO\*\*  
 MARC D. HAEFNER  
 JONATHAN P. McHENRY  
 JAMES P. RHATICAN\*\*  
 BRAD D. SHALIT\*  
 M. TREVOR LYONS\*  
 CRAIG S. DEMARESKI\*  
 W. NEVINS MCCANN\*  
 THOMAS J. O'LEARY\*  
 MITCHELL W. TARASCHI  
 MICHAEL A. SHADIACK  
 OWEN C. McCARTHY\*  
 PATRICIA A. LEE\*\*  
 AGNIESZKA ANTONIAN\*  
 CHRISTOPHER J. TUCCI+  
 NEIL V. MODY\*

COUNSEL

JOHN W. BISSELL  
 EUGENE J. CODEY, JR.  
 FRANCIS E. SCHILLER\*  
 EUGENE P. SQUEO\*  
 NOEL D. HUMPHREYS\*  
 ANTHONY ROMANO II\*  
 STEVE BARNETT\*  
 THOMAS M. SCUDERI\*

KARIN I. SPALDING\*  
 JODI ANNE HUDSON\*  
 RICHARD A. JAGEN  
 JOSEPH M. MURPHY\*  
 NANCY A. SKIDMORE\*  
 JASON E. MARX\*  
 ALEXIS E. LAZZARA  
 DANIEL B. KESSLER

DOUGLAS J. SHORT\*  
 JAMES M. MERENDINO  
 MICHELE T. TANTALLA\*  
 HECTOR D. RUIZ\*  
 ROBERT A. VERDIBELLO\*  
 JENNIFER C. CRITCHLEY\*  
 PATRICK S. BRANNIGAN\*  
 DANIELA R. D'AMICO\*  
 CHRISTINE I. GANNON\*  
 PHILIP W. ALLOGRAMMETO III\*  
 LAURIE B. KACHONICK\*  
 ANDREW C. SAYLES\*  
 STEPHEN D. KESSLER  
 CHRISTOPHER ABATEMARCO\*  
 ANTHONY J. CORINO\*  
 WILLIAM D. DEVEAU\*  
 CONOR F. MURPHY\*  
 MEGHAN BARRETT BURKE\*  
 RUKHSANAH L. LIGHARI\*  
 STACIE L. POWERS\*  
 NICOLE B. DORY\*

JOSEPH A. VILLANI, JR.\*  
 MICHAEL BOJBASA-  
 CHRISTOPHER M.  
 HEMRICK\*  
 SUSAN KWiatkowski\*  
 MONICA SETH\*  
 MELISSA D. LOPEZ  
 ANDREW L. BARON\*  
 JASON D. FALK\*  
 JOANNA S. RICH\*  
 MEGAN K. MUSSO  
 EDMUND J. CAULFIELD\*  
 SYDNEY J. DARLING\*  
 JESSICA L. PALMER  
 NEIL V. SHAH\*  
 STEPHEN R. TURANO\*  
 TARA L. TOULOUSIS\*  
 MICHAEL J. CREEGAN\*  
 THOMAS M. BLEWITT,  
 JR.+  
 BRIAN S. WOLFSON  
 SONYA B. COLE  
 MOLLY F. HURLEY

\* ALSO ADMITTED IN NEW YORK  
 + ALSO ADMITTED IN PENNSYLVANIA  
 - ONLY ADMITTED IN NEW YORK  
 PLEASE REPLY TO ROSELAND, NJ

November 17, 2011

### VIA E-FILING

The Honorable Claire C. Cecchi  
 United States District Judge  
 District of New Jersey  
 The Rev. Dr. Martin L. King, Jr., Federal Bldg. and Courthouse  
 Federal Square  
 Newark, New Jersey 07101

**Re: *In re Insurance Brokerage Antitrust Litigation (MDL 1663), Civil Action No. 04-5184***

Dear Judge Cecchi:

This office is counsel to the Ace Defendants and Liaison Counsel to the Non-Settling Defendants. We write on behalf of all the Defendants to respond to the Tag-Along Plaintiffs November 15, 2011 Notice of Subpoena and their letter to Your Honor. (Dkt. ## 1940 and 1933).

Succinctly put, the filing of the Notice of Subpoena underscores the need to stage discovery in this matter in conformity with Your Honor's October 17, 2011 statements on the record. The Tag-Along Plaintiffs, without regard for Your Honor's statements and without regard for the fact that neither of the competing orders on the staging of discovery has been

The Honorable Claire C. Cecchi, U.S.D.J.

November 17, 2011

Page 2 of 3

executed, are simply moving forward at their own pace. Your Honor set forth a clear case management plan during the conference on October 17, 2011. Yet since then, Tag-Along Plaintiff Signum has filed a default in violation of common sense, New Jersey practice, and Your Honor's specific directions on the October 17, 2011 conference call. (Dkt. # 1928). Now, Tag-Along Plaintiff New Cingular has served the subpoena identified in the Notice of Subpoena. (Dkt. # 1940). Both initiatives are in violation of Your Honor's instructions, and both serve to frustrate Your Honor's goals of an orderly discovery process. New Cingular's subpoenas are particularly troubling because New Cingular was involved in discovery when it was proceeding in the MDL action. New Cingular, with complete disregard for the orders currently in place that govern discovery, wishes to simply "start over." Its purpose is obvious: despite having received voluminous discovery concerning its own placements, it lacks sufficient factual basis for its own complaint (which it says it plans to amend) and so it is effectively seeking pre-complaint discovery concerning an unrelated policyholder's placements as part of a fishing expedition in anticipation of its amendment.

The Tag-Along Plaintiffs through their actions and their proposed scheduling order seek to reverse years of prior scheduling orders in hopes of pressing full-scale discovery forward in each and every Tag-Along case even while motions to dismiss are pending. The Tag-Along Plaintiffs' actions also ignore the reasoning of Judge Hochberg and Magistrate Judge Shwartz in determining a "once and for all" discovery plan in Order No. 9 specifically designed with the goal of fairness to later-added Tag-Along actions (Oct. 4, 2006 Hr'g Tr. at 10, 18-19), and it would ignore the teachings of *Twombly* that guided Your Honor's oral decision that discovery could proceed in a staged fashion under the guidance of Magistrate Judge Shwartz. Indeed, Magistrate Judge Shwartz worked closely with the Court in devising the plan for discovery in the Tag-Along actions set forth in Order No. 9 that certain plaintiffs now seek to vacate. (Oct. 4, 2006 Hr'g Tr. at 10 ("My plan is to listen to you as to what the main sticking points are, review your various submissions . . . and with Magistrate Judge Shwartz issue a once and for all discovery schedule.")).

To bring order to this process, we respectfully ask that the Court enter the proposed scheduling order offered by the Defendants on October 31, 2011. That order fully captures the Court's concern that discovery proceed in a staged and efficient fashion, even while motions to dismiss are filed and resolved. (Dkt. # 1932).

Should Your Honor have any questions or desire anything additional, we will be available at Your Honor's convenience.

Respectfully submitted,

*s/Marc D. Haefner*

Marc D. Haefner

The Honorable Claire C. Cecchi, U.S.D.J.

November 17, 2011

Page 3 of 3

cc: Magistrate Judge Shwartz (via Lawyer's Service)  
All Counsel of Record (via E-filing and Email)